Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

IRIS C. WOOD,
Petitioner,

vs.

JAMES BILLINGTON, LIBRARIAN OF CONGRESS
Respondent.

On Petition For Writ Of Certiorari
To United States Court of Appeals for the
District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

David B. Nolan, Esq.
8310 Wagon Wheel Road
Alexandria, Virginia 22309
Phone: 703-780-1864
Counsel for Petitioner

QUESTIONS PRESENTED

(1) Does a non-probationary employee of the Library of Congress have a property right in employment protected by 5th Amendment due process guarantees? Does a non-probationary attorney employed at the Library of Congress have a property right in employment protected by 5th Amendment due process guarantees?

(2) Does a non-probationary employee of the Library of Congress have a liberty interest that is protected by 5th Amendment due process guarantees? Does a non-probationary attorney employed at the Library of Congress have liberty interest that is protected by 5th Amendment due process guarantees?

(3) Do Fifth Amendment due process guarantees require that non-probationary 905 series attorneys at the Library of Congress have the same appeal rights to the MSPB, EEOC, and the OSC, as non-probationary 905 series federal attorneys in the Executive Branch?

(4) Do Fifth Amendment due process guarantees require that non-probationary 905 series attorneys at the Library of Congress have the same procedural due process guarantees to federal courts as non-probationary 905 series federal attorneys in the Executive branch?

(5) Does the penumbra of the United States Constitution require that Library of Congress (Article I) non-probationary 905 series federal attorneys have the same procedural due process guarantees to the MSPB, EEOC, and OSC as do non-probationary 905 series federal attorneys in the federal government (Articles II and III)?

(6) Does the penumbra of the United States Constitution require that the Library of Congress (Article I) non-

probationary employees have the same procedural due process guarantees to MSPB, EEOC, and OSC as do other non-probationary federal employees (Articles II and III)?

(7) Does the penumbra of the United States Constitution require that Library of Congress (Article I) non-probationary 905 series federal attorneys have the same procedural due process guarantees to federal courts as do non-probationary 905 series federal attorneys in the federal government (Articles II and III)?

(8) Does the penumbra of the United States Constitution require that the Library of Congress (Article I) non-probationary employees have the same procedural due process guarantees to federal courts as do other non-probationary federal employees (Articles II and III)?

(9) Did the Library of Congress reject a written Congressional directive regarding ADA compliance that adversely affected Library of Congress employees?

(10) Has the Library of Congress inflicted adverse impact upon its employees who are protected by the American with Disabilities Act?

(11) Has the Library of Congress inflicted adverse impact upon its female employees protected by Title VII of the Civil Rights Act of 1964?

LIST OF ALL PARTIES

Petitioner / Plaintiff Below:

Iris C. Wood

Counsel For Above

David B. Nolan, Esq.
8310 Wagon Wheel Road
Alexandria, Virginia 22309-2315
Phone: 703-780-1864

Respondents / Defendants Below:

James Billington
Librarian of Congress
101 Constitution Avenue SW
7th Floor
Washington, D.C. 20540

Counsel For Above

Paul D. Clement, Solicitor General
United States Department of Justice
950 Pennsylvania Avenue N.W.
Room 5614
Washington, D.C. 20530-0001

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5th Amendment to the United States Constitution

Title VII of the Civil Rights Act of 1964, 42 U.S. C. Section 2000e, *et seq.*

Americans with Disabilities Act, 42 U.S.C. 1201, *et seq.*

D.C. Circuit Rule 35

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OPINIONS BELOW

The court of appeals' opinion is not reported. The opinion of the district court is not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 26, 2006. This Court has jurisdiction under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY ISSUES INVOLVED

The court of appeals has upheld the district court opinion in reversing the rule in *AFSCME Local 247 v. Billington,* 740 F. Supp. 1, 2 (1990) that a non-probationary employee of the Library of Congress has a property right in federal employment. All other Circuits recognize that a non-probationary federal employee has both a property and liberty interest in employment. It is compelling for he Supreme Court to render a decision resolving these conflicts.

The appellant's denial of her 5th Amendment guarantees of due process require her reinstatement as Assistant General Counsel of the Library of Congress with appropriate back pay, promotions, and benefits. The Library of Congress is an Article I institution of the US Congress. This Court now has the opportunity to grant certiorari to resolve whether non-probationary federal employees (Articles I, II, & III) all have a property right in their employment or not.

The district court ruled that since its opinion was not published under the District of Columbia Rule 35, there was no tarnishing of the appellant that would injure her future employment opportunities. The district court gave little if any weight that the appellant, an Assistant General Counsel of the Library of Congress in charge of contract review, was subjected to three fitness for duty examinations by her boss who was suffering from a brain tumor and who had previously subjected her to harassment, battery and false imprisonment. The decision of the Hearing Officer of the Federal Mediation and Conciliation Service (FMCS) finding that the appellant, Mrs. Wood, was fit for duty was overturned by the Deputy Librarian, without a constitutionally required written opinion or any reason or justification.

In an attempt to support the opinion of the district court, the court of appeals did not address the issue of whether a non-probationary employee of the Library of Congress has a liberty interest in future employment.

These due process issues are very important to Library of Congress employees and compel the Supreme Court the render a decision.

Neither the district court nor the appellate court justified the failure of the Library of Congress to make reasonable accommodation to the appellant's life debilitating physical conditions within the meaning of the Americans with Disabilities Act. These include the appellant's orthopedic surgery, chronic-interstitial cystitis, precariously patched heart from a ventricular septal defect in size between a nickel and a quarter, and her heart arrhythmia with resulting nervous tension. Office stress and tension were worsened by battery and false imprisonment by John Kominski, who retired with full federal benefits following a diagnosed brain tumor while employed without forced mental examinations.

The testimonies of Dierker and Greenfield indicated John Kominski's yelling and other abusive behaviors in the work place constituted a threat to his subordinates, especially to the weakest employee physically, Mrs. Wood. Yet Kominski irrationally accused Mrs. Wood of being a threat to the work place, while his abusive behavior may be attributed to the effects of his brain tumor.

Kominski refused to recuse himself from the fitness for duty panel that orchestrated the appellant being placed upon leave without pay in 1995. There was no determination that a termination of Mrs. Wood's employment in 1999 would further the "efficiency of the service" as required under federal law.

Between 1995 and 1999 she was suspended from her job at the Library of Congress on leave without pay. This constituted constructive termination or possibly the longest suspension without a hearing in history.

The Federal Mediation and Conciliation Service (FMCS) May 2001 decision to reinstate Mrs. Wood's employment at the Library of Congress with back pay and benefits was erroneously disregarded by the Deputy Librarian of the Library of Congress.

There was never a rebuttal by the Library of Congress to the medical opinions by Stephen Rojcewicz, M.D., psychiatrist that Mrs. Wood was fit for duty. There is no final agency finding of fact or law to contradict the decision of the hearing officer of the FMCS. This failure denied the appellant procedural and substantive due process guaranteed under the 5th Amendment to the United States Constitution.

STATEMENT OF THE CASE

The appellant brings her case under both the 5th Amendment property right and liberty interest and under Title VII of the Civil Rights Act of 1964, 42 USC 2000(e), for prohibited discrimination by the Library of Congress against her on the basis of sex.

Mrs. Wood also brings this case under the Americans with Disabilities Act for the Library of Congress' refusal to accommodate her after orthopedic surgery to be fully ambulatory in 1993. The Library of Congress also refused to accommodate her heart condition and falsely labeled her as mentally disabled as a pretext to terminate her federal employment.

The hostile environment imposed by Kominski was traumatic and stressful to her heart condition in particular. Her heart arrhythmia/palpitations and bladder conditions were worsened by the intentional infliction of stress and duress by Library of Congress General Counsel John Kominski.

But for her sex (female) and history of heart problems since birth, she would not have suffered a battery and false imprisonment from her immediate supervisor, John Kominski, the responsible management official (RMO) for Library of Congress legal staff. He prayed upon Mrs. Wood's vulnerabilities.

But for her sex and her life threatening heart conditions, the alleged discriminating official (ADO) Kominski would not have imposed a hostile work environment. He constructively terminated appellant's federal employment by placing her on leave without pay from 1995 to 1999.

But for her sex and heart problems, the Deputy Librarian would not have denied her 5th Amendment guarantees of due process in overturning the thirty-five page decision of the Hearing Officer from the Federal Mediation and Conciliation Service in her favor. The Deputy Librarian fired Mrs. Wood with no written opinion or findings of fact. Under the Library of Congress' constitutionally inadequate procedures, the plaintiff has no appeal rights beyond the Deputy Librarian.

The appellant petitions for a writ of certiorari from this Court upholding the opinion of the Hearing Officer from the Federal Mediation and Conciliation Service granting her reinstatement as an Assistant General Counsel of the Library of Congress. Plaintiff's motion for summary judgment should be approved by this Court and the summary judgment

in favor of the Library of Congress must be vacated. Moreover, the appellant was denied the jury trial to which she was entitled.

The district court reversal of the *AFSCME Local 247 v. Local 247 v. Billington,* 740 Fed. Supp. 1, 4 (1990) adversely affects not only the appellant but approximately forty two hundred (4200) non-probationary employees of the Library of Congress. Each of these, like Mrs. Wood, has completed a federal probationary period and has an expectation of continued employment absent removal for misconduct or inadequate performance.

Mrs. Wood completed her GS-12 probationary year at the Library of Congress and was thereafter promoted to a GS-13 Assistant General Counsel in the 905 attorney series established by the Office of Personnel Management (OPM). The appellant attorney was cognizant that she had a property interest in her federal employment by her successfully competing for the Library of Congress vacancy announcement for GS-905-12/13/14 career ladder position. She is also cognizant that she has a liberty interest in her professional reputation as an attorney of thirty-one years with the capability for competing for further advancement to any GS/GM-905-15 vacancy after one year or longer as a GS -14.

District Court Judge Urbina's conclusion that the federal government did not contest the issue of property right in the 1990 AFSCME case is not persuasive. The AFSCME case is relied upon in Library of Congress collective bargaining agreements by management and by the several unions that represent the vast majority of the Library of Congress' employees.

The plaintiff raised expressly in her district court complaint that she had a property right in her federal employment at the Library of Congress. The plaintiff also

alleged to the district court that she was deprived of this property right without due process of law.

The appellant joined the Library of Congress in 1991 as the most qualified candidate for the announced vacancy of a GS-905-12 attorney position to provide legal support for contracting. She not only completed her probationary period as a GS-12 but was later promoted to a GS-13 Assistant General Counsel of the Library of Congress. In her prior employment as a GS-905-13 attorney in contracts for the U.S. Army and in her entire employment at the Library of Congress Mrs. Wood was never sighted for poor performance.

The summary affirmance by Appellate Judges Randolph, Tatel and Brown of the Memorandum Opinion of District Court confirms Judge Urbina's overturning the rule in *AFSCME Local 247 v. Billington,* 740 F. Supp. 1, 4 (D.D.C. 1990), i.e., that each non-probationary Library of Congress employee has a property right in federal employment protected by 5th Amendment due process guarantees.

Moreover, Mrs. Wood's liberty interest in future employment is further tarnished by the Order of this Circuit Court, whether or not the disposition in this case is published or not under D.C. Circuit Rule 41. The Order erroneously concludes that the plaintiff does not have a liberty interest within the meaning of *Regents v. Roth,* 408 U.S. 564, 573 (1972) despite her being subjected to three "Star Chamber" fitness for duty examinations, each attempting to place her in a false light.

The district court opinion falsely concludes that the plaintiff failed to demonstrate for purposes of summary judgment that her suffering a hostile environment of harassment, false imprisonment, and battery by General

Counsel John Kominski did not establish a compelling *prima facie case* within the meaning of *McDonnell Douglas v. Green.* The Library of Congress refused to turn over RMO Kominski's report to the Library of Congress Office of Security to the hearing or court record. The Library of Congress refused to turn over the demand letter of Congress

in summer 1995 that the reluctant Library of Congress implement federal guidelines regarding mental fitness for duty in line with the executive branch.

The Order also erroneously concludes that appellees had a credible pretext for denying Mrs. Wood reasonable accommodation as a federal employee under the Americans with Disabilities Act (ADA) to elevate her leg at her desk following orthopedic surgery, to place her on leave without pay from 1995 to 1999, to remove her from federal employment without due process in violation of the Hearing Officer's finding that Mrs. Wood was <u>not</u> a danger to others, and failing to restore back benefits.

The Memorandum Opinion improperly relied upon by Judges Randolph, Tatel, and Brown, grossly misstates legal precedent and the factual record from the plaintiff's consolidated EEO complaints leading to the adverse decision in case 1:03-cv-01343-RMU. In expressly overturning the rule in A*FSCME Local 247 v. Billington, infra,* the district court not only destroyed plaintiff's property right in her federal employment but undermined the 5th Amendment due process rights of all other non-probationary federal employees at the Library of Congress.

Despite the guidance and budgeting from Congress, all employment at the Library of Congress is now at will. The whim of a supervisor is now the rule.

Judge Urbina ignored constitutional precedent over the previous sixteen (16) years that was favorable to the plaintiff. Judge Urbina also failed to construe material contested facts in favor of Mrs. Wood as the non-moving party, in granting summary judgment to defendant. This misapplies the rule in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 255 (1986).

Judge Urbina failed to provide the plaintiff with a full evidentiary and demanded jury trial on disputed questions of facts. The district court viewed the following contested facts unfavorably against the plaintiff and in favor of the defendant, the moving party in the granted summary judgment:

(1) Can the Deputy Librarian of Congress ignore without making any factual or legal finding the thirty-five decision of the duly appointed Hearing Officer from the FMCS that the plaintiff is fit for duty and is owed back pay?

(2) Was plaintiff's alleged misconduct of once losing her composure when provoked by Kominski is so severe as to justify her involuntary separation from the federal service without due process regarding her property interest in federal employment?

(3) Did the Library of Congress perpetuate disparate treatment of Mrs. Wood by inflicting severe and excessive punishment while condoning the erratic and dangerous behavior of a man, John Kominski, suffering from a brain tumor?

(4) Can the Deputy Librarian ignore *Douglas* case factors that would have mitigated the extermination of her federal career?

(5) But for Mrs. Wood's sex (female), history of physical handicap conditions (heart arrhythmia, bladder condition, and nervous tension) and reprisal for prior protected activity (her consolidated EEO complaints), would Kominski have placed the plaintiff in a severely hostile environment and imposed leave without pay from 1995 to 1999 as a constructive termination of federal employment without due process?

(6) Could Kominski, with pending EEO complaints against him for false imprisonment and battery on Library of Congress premises, sit on a panel without recusal so as to subject Assistant General Counsel Wood to three ongoing fitness of duty examinations without justification and in violation of both the historic and Congress' prohibitions in 1995 against forced mental fitness for duty examinations?

(7) Was the failure of RMO Kominski to make reasonable accommodation within the meaning of the Americans with Disabilities Act for Mrs. Wood's heart problems, bladder condition, and nervous stress merely a perpetuation of his hostile environment in reprisal for her raising several EEO complaints against him as the alleged discriminating official Kominski?

(8) The Library of Congress has failed to rebut the medical conclusion of psychiatrist Dr. Stephen Rojcewicz that the plaintiff was and has been fit to return to federal employment.

(9) After plaintiff's establishing a compelling *prima facie case* of prohibited sexual discrimination regarding disparate treatment and reprisal as to how males are treated, how could an alleged symbolic "off with the head" hand gesture regarding the man who battered her justify the termination of her federal employment while the prohibited sexual discrimination, false imprisonment and battery by the

General Counsel of the Library of Congress be condoned and rewarded in retirement without a forced mental examination?

(10) Why should the plaintiff not have an expectation of a property interest in her employment after her competitive selection in a vacancy announcement in 1991 for a GS-12 staff attorney position, her successful completion of a one year probationary period, and her 1993 promotion to an Assistant General Counsel position that was established in the 1992 Congressional reorganization plan? Her promotion to a career ladder GS-13 was granted in accordance with her very good annual performance appraisal for the prior year.

Each of these ten factual issues wrongly decided by the district court and upheld upon appeal affect the proper disposition of this case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). They each compel this Court to correct resulting inconsistency among the Circuits as to the property right and liberty interest in federal employment. This Court must supervise the conduct of the district court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit.

This circuit court's failure to correct clear district court error reflects the need of Congress or this Court to reorganize the federal judiciary. An intermediate body between the court of appeals and this Court would have exclusive jurisdiction over revived historic writs of error.

The Library of Congress is created by the Legislative Branch under Article I powers of the United States Constitution. It is inherently evident that employees of the Library of the Congress of the United States are protected by the rule of law. They are not vassals of politicians or Library of Congress aberrant managers with reprisal agendas.

The Deputy Librarian and General Counsel John Kominski are two of the three leading non-elected officers of this Legislative Branch institution. They each violated the 5th Amendment due process procedural and substantive rights of Mrs. Wood.

They each flagrantly flaunted both Library of Congress and Congressionally mandated mental fitness for duty guidelines. Under the rule of *McDonnell Douglas v. Green*, the burden must shift to the Library of Congress to provide a plausible pretext why federal procedures were not complied with in fitness for duty examinations.

In 1993 the plaintiff filed a sex discrimination complaint against Kominski. As General Counsel he subjected the plaintiff to reprisal actions including three intrusive and unwarranted fitness for duty examinations in an ever increasingly hostile environment that contributed to traumatic stress.

The Deputy Librarian then ignored the thirty-five page finding of the Hearing Officer that Mrs. Wood was <u>not</u> a danger in the work place. Nevertheless, the Deputy Librarian fired the plaintiff in 1999 without providing her any due process review to contest his decision, an outcome with no written justification.

By rejecting the Hearing Officer's finding, the Deputy Librarian arbitrarily and capriciously ordered her separation from federal employment in violation of traditional notions of fair play and substantial justice guaranteed by the U.S. Constitution. Procedural due process under the *penumbra* U.S. Constitution requires that a federal deciding official must justify in writing any departure from a recommending official finding of fact, in this case, that the plaintiff was found <u>not</u> to be a work place "danger."

The Urbina opinion recognized that statistically women receive more frequent and harsher discipline at the Library of Congress. Yet, he declared that the false professional tarnishing of Mrs. Wood's reputation did not hurt her liberty interest because Urbina's incredible opinion is not published.

But for Mrs. Wood being female, but for her heart problems, and but for her prior participation in protected EEO activity, Library of Congress management would not have treated her disparately by ostracizing her from co-workers from 1995 to 1995 on leave without pay. The record reflects that no male or other person without protected EEO activity was as adversely treated by the Library of Congress.

At no time was there any attempt by Library of Congress management to provide reasonable accommodation to reduce office stress or even enable prompt healing of the plaintiff's orthopedic surgery. Management even denied her the modest request for enough room at her desk to elevate her leg for proper healing. At this time a one-foot plastic rodent was surreptitiously placed atop Mrs. Wood's filing cabinet. Kominski spit at her while he clenched his fist as he blocked her door and threatened to fire her. Shortly thereafter, Library of Congress Dispute Resolution Specialist Brad Weiss then threatened Mrs. Wood with transfer out of the attorney series to a contracts paper pusher position in another division.

From the mistreatment of Mrs. Wood, the Library of Congress has established itself as the backwater for employee rights in the federal government. The Library of Congress objected to Congress' attempt to adopt Americans with Disabilities Act protections applicable to its employees. The Library of Congress unduly delayed Mrs. Wood's recovery to a fully ambulatory condition. The Library of Congress

objected to the instruction by Congress to stop abusing its employees with mental fitness for duty examinations.

Instead, Library of Congress management contrived new schemes to inflict emotional and physical forms of traumatic stress upon Mrs. Wood who continued to struggle daily with a congenital heart defect that comprised a life threatening condition. Plaintiff's medical vulnerabilities enticed the bullies and misogynists at the Library of Congress to exploit her sadistically.

The hostile environment imposed by Library of Congress Management was intended but failed to provoke Mrs. Wood to loose her composure so as to make it appear that it was she who was dangerous to others and not Kominski. The FMCS Hearing Officer determined Ms. Wood as fit for duty.

Library of Congress management also failed in its effort to provoke or fabricate an alleged incident of insubordination. Since the Library of Congress also could not credibly challenge Mrs. Wood's work product as a competent Assistant General Counsel with contracting law expertise so as to remove her from federal service based upon performance, the hostile management sought new manipulations to harass Mrs. Wood to drive her out of the Library of Congress.

Plaintiff's hostile environment in January 1995 was worsened by RMO Kominski's physically blocking her from exiting his office door as false imprisonment. In so doing, he grabbed and wrenched her wrist following an interrogation in which the General Counsel fully lost his composure. The tall and big boned Kominski has a reputation for a hair trigger temper and emotional outbursts as confrimed under oath by co-workers Dierker and Greenfield.

The physically vulnerable plaintiff became extremely frightened by this false imprisonment and battery in violation of her constitutionally protected *Weingarten* rights during his interrogation. The callous response by the Library of Congress Security officer was that plaintiff's plight from the harmful touching and restraint was not sufficiently long enough in his view [not that of a reasonable person] to be considered false imprisonment in the harasser Kominski's private office.

In comparison, the Uniform Code of Military Justice defines rape, as "penetration, however slight, as sufficient to commit the offense." While the duration may have been "slight" in the mind of the Security Officer, to Mrs. Wood it seemed near an eternity, and it was sufficiently long for Mrs. Wood to suffer abrasions on her wrist from Kominski's fingers while he blocked her attempted exit from his private office. Therefore, the Library of Congress Security Officer failed to do his duty in deference to the power and position of General Counsel Kominski.

REASONS FOR GRANTING THE WRIT

Due to violation of the 5th Amendment guarantees, Library of Congress employees now have only the rights of second-class citizens to that of their Executive Branch (Article II) brethren and sisters. In contrast, both non-probationary competitive service and non-probationary selective service (Schedules A and B) employees have by Executive Order been provided the right to appeal their adverse personnel actions to the Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), and the Equal Employment Opportunity Commission (EEOC).

Since Mrs. Wood has not been afforded any right to an MSPB appeal or OSC and/or EEOC remedy or any due

process agency review of the adverse decision by the Deputy Librarian, the Library of Congress has also improperly denied her substantive and procedural rights in violation of the United States Constitution. Executive Branch attorneys do have appeal rights of adverse actions before the MSPB, not as misstated by Judge Urbina as a precedent to use against the plaintiff.

Unlike Schedule C excepted service employees, who serve at the pleasure of the Executive, the plaintiff had no reason to suspect that her property right won through competitive vacancy selection and perfected through the successful completion of a probationary period was subject to the employment "at will" whims of her General Counsel boss with a brain tumor or the Deputy Librarian who could not, or refused to state, the basis for terminating her federal employment.

The deciding official's failure to provide a factual or legal basis for Mrs. Wood's termination has not furthered the "efficiency of the service." The absence of a finding that her employment termination by the Deputy Librarian furthered the "efficiency of the service" is dispositive of this case.

Moreover, this Court is now compelled to provide assurance to all non-probationary federal employees under Articles I, II and III that their respective property rights and liberty interests in employment guaranteed by the 5th Amendment in federal employment will not be infringed. This Court must also guide all other circuits that there is a property and liberty interests of non-probationary federal employees within their circuits and the conflict has been resolved.

The Plaintiff's property right in her career position at the Library of Congress was never one of being a federal policy official whose tenure was subject to the results of a

presidential or congressional election. She has every expectation that her federal employment was secure from unconstitutional infringement.

Unlike many police and airline pilots who must undergo periodic mandatory examination to continue their respective employment requirements, Mrs. Wood as the Assistant General Counsel of the Library of Congress had no affirmative duty to do so under her position description. Mrs. Wood never encumbered or was ordered to encumber any position description that required her to subject herself to fitness for duty examination. This is dispositive of the failure of the Library of Congress to contrive a viable pretext to remove her from employment,

By her own strength of will, the plaintiff: (1) overcame her life threatening congenital heart defect, (2) was a farm girl who graduated from law school and passed the bar, (3) earned a Masters degree, (4) became one of the first hundred women bar members of her southern home state, and (5) rose to the position of an Assistant General Counsel and contracting expert for the Library of Congress.

When the plaintiff invoked EEO protected activity, she enraged the powers that be of her tiny federal enclave. The Library of Congress fiefdom promulgated inadequate at best, and conflicting at worse, internal procedures that grant few, if any, substantive or express procedural rights to its employees.

With conflicting sets of fitness for duty regulations, the Library of Congress always reserved for itself the ploy to allege falsely that an employee committed "misconduct" by not precisely following the "intended" procedures as the managers interpreted the rules. In his opinion, Judge Urbina calls this "insubordination."

However, these three sets of conflicting standards for fitness for duty over three examinations from 1994 to 2004 are themselves constitutionally suspect as not interpretable because of vagueness and over breadth. Since management could not support any insubordination pretext, it just continued to wear down the health of the plaintiff with fitness for duty examinations as the emotional equivalent of three successive rapes.

Those few employee rights that the Library of Congress has bestowed are through its collective bargaining agreements. The protection through the American Federation of State, County and Municipal Employees (AFSCME) was denied to the plaintiff.

As an attorney entrant at the Library of Congress with sixteen (16) years of prior legal and professional experience, Mrs. Wood served for one year as a GS-12 probationary employee reporting to Associate General Counsel Robert Lincoln. She successfully completed that probationary period.

At the time, her position was arbitrarily and capriciously classified by the Library of Congress management as excluded from the bargaining unit. Despite never being assigned any management or personnel duties so as to be legally excluded from the bargaining unit, the plaintiff, as a staff attorney, remained "management." Moreover, she was blocked promotion to a GS-14 career. She was denied the opportunity to compete for a supervisory GS/GM-15 position.

Her non-supervisory attorney position was part of a 1992 congressionally ordered reorganization plan for the Library of Congress Office of General Counsel staff. At every opportunity, the General Counsel Office of the Library

of Congress attempted to circumvent Congressional guidance, budgeting and oversight

General Counsel Kominski told the plaintiff that he could not reassign her from her career ladder because of the legislative mandate for it and her promotion. The position that Mrs. Wood encumbered was funded from Library of Congress sales. However, Kominski and the Deputy Librarian orchestrated Mrs. Wood's expulsion from federal employment.

Mrs. Wood's bargaining unit exclusion cannot withstand 5th Amendment scrutiny because she has been denied the opportunity to challenge her erroneous classification as outside of the bargaining unit. When the plaintiff raised the inadequacy of a "satisfactory" annual performance rating by Associate General Counsel Lincoln, she was bumped up organizationally to report directly to the abusive General Counsel, John Kominski, as her new rating official. The promotion in reporting to the General Counsel did not result in a pay increase. The plaintiff now seeks retroactive promotion to a GS-14 with back pay and benefits since her improper involuntary separation from federal service and interference with advancement in her career ladder.

Since Mrs. Wood was excluded from the bargaining unit, she never had any "standing" to invoke negotiated grievance procedures to contest any unfairly low performance rating or even enjoy *Weingarten rights* that are recognized as mandatory by this Court for bargaining unit employees in the Executive Branch.

In light of no *Weingarten* rights, RMO Kominski could more easily subject Mrs. Wood to his fitness for duty interrogations so that he could develop a pretext to remove her from federal employment. At no time was the plaintiff

ever authorized to have a union official present at such interrogations.

All circuits must consistently ensure that federal employees have uniformly protected property, liberty interest, and *Weingarten* rights. This will also help deter further assaults against female subordinates by overpowering males.

The same supervisor of which the plaintiff complained of sex discrimination, General Counsel Kominski, was not compelled to recuse himself from the four member panel that ordered Mrs. Wood to be scrutinized and "psychologically raped" by ongoing fitness for duty examinations. These brutal interrogations furthered the hostile environment and created traumatic stress injuries to inflict and open psychological wounds rather than provide reasonable accommodation under the ADA.

Plaintiff's health sensitivities of a damaged heart, nervous stress and orthopedic surgery made these ongoing stressful examinations even more hostile. Management ignored its affirmative duty to implement protections under the Americans with Disabilities Act, even for Mrs. Wood to be fully ambulatory as a major life function.

As a violation of 5th Amendment due process, the plaintiff is barred standing to file a certificate of unit petition to the Federal Labor Relations Authority (FLRA) to appeal her wrongful exclusion from the bargaining unit. Moreover, she was barred from her First Amendment Right of association to be in the bargaining unit and become a union member under the Federal Labor-Management Relations Act, which is hereby brought under constitutional scrutiny to this Court.

The Urbina opinion affirmed by the March 13 circuit court Order that perpetuates the fraud that Mrs. Wood, as a widowed Sweet Briar College graduate and southern farm girl from tobacco road in her fifties, is a "danger" to others in the work place. She has no history of physical or emotional outbursts of any kind.

The cheap shot aspersions by Library of Congress management of her being physically dangerous are ludicrous since she is passive, reserved, and vulnerable. Her health has been continuously frail since birth.

Judge Urbina contradicts himself to imply that her liberty interest in seeking future legal employment is not damaged by the Library of Congress' ongoing stigmatizing her with unwarranted mental health examinations.

In his decision at page 20, Judge Urbina overturns the federal court rule in *AFSCME LOCAL 2477 v. Billington,* 740 F. Supp. 1, 4 (D.D.C. 1990) that a non-probationary employee at the Library of Congress has a property interest in federal employment. His self-serving conclusion to reach his convoluted approval of the defendant's summary judgment motion is that the federal government did not contest the property question in this earlier case, or arguably in the sixteen years thereafter.

Judge Urbina has failed to address the fact that the District of Columbia Circuit recognizes that involuntary placement on administrative leave for eighteen months, let alone leave without pay for over four years, constitutes a separate property taking and a constructive termination of federal employment. Mrs. Wood was placed on leave without pay from 1995 to 1999.

The failure of Judge Urbina to follow case precedent of a property right for non-probationary Library of Congress

employees is outrageous. It is as vulgar as a white federal judge *sua sponte* attempting to reverse racial progress won over time by declaring that Congress did not intend expressly to extend Title VII protections to its employees. Urbina strangely implies that Title VII is the sole remedy for Mrs. Wood. He also attempts to nullify constitutional guarantees of due process as to a property right and liberty interest.

More speciously, Urbina relies on the superseded 1988 case of *Garrow v. Gramm,* 856 F. 2d 203, 207 (D.C. Cir.) for the false proposition that an agency "attorney does not have a property interest in federal employment." By Executive Order during his administration (1989-1993), President George Herbert Walker Bush, extended to career non-SES attorneys and other Executive Branch Schedule A excepted service employees their right to contest adverse actions to the Merit Systems Protection Board (MSPB).

In a further denial of due process, Mrs. Wood has been denied access to any MSPB, EEOC or OSC forum to challenge her involuntary separation from her federal employment. This Court must now provide relief of deprived constitutional rights with the expansion the scope of *Bivens* actions to Library of Congress employees and those involved in EEO or other protected activity, such as whistle blowing within the meaning of the federal Whistleblower Protection Act of 1989, as amended.

CONCLUSION

The plaintiff appreciates this opportunity to speak from her heart, as continuously injured as it has been. She requests that this Court take judicial notice that 92% of November 2006 voters sited government corruption as motivation for the exercise of their respective constitutional voting privilege in this republic. Similarly, two thirds of the

American public believe that the federal government eavesdrops on their personal phone calls. The Executive Branch admits now that it opens the public's mail.

It is time for the federal government to stop waging war on its own citizens, especially those with the courage to pursue EEO and other protected activity.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

David B. Nolan, Esq.
8310 Wagon Wheel Road
Alexandria, Virginia 22309-2315
Phone: 703-780-1864

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